

**REMARKS**

Claims 1-22 remain pending in this application. Claims 1-11 and 17-22 have been allowed. Independent claim 12 is amended by this supplemental response.

In furtherance of the remarks to the claim rejections in view of prior art submitted with the Amendment filed on January 26, 2005, Applicant hereby restates these remarks including certain amendments thereto in order to clarify the remarks.

**Rejection of Claims 12-16 under 35 U.S.C. § 102(e)**

Claims 12-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Olafsson (U.S. Pat. 6,163,570). Applicant respectfully traverses.

The present invention as defined in independent claim 12 provides a method for controlling a transmit power of either of the modems in a PCM modem system that includes an analog modem coupled to a digital modem. The method specifies *measuring* a transmit power level of at least one of the modems and *using the measured transmit power level* as a parameter in designing a constellation.

Olafsson discloses a pulse code modulation modem system which utilizes the same total average transmit power formula for designing signal point constellations and for verifying that the transmit power of the signal point constellations are within a designated maximum power limit. The transmit power of the signal point constellations designed by the client modem is also calculated by the server modem to verify that the transmit power limit imposed upon the server modem is not exceeded.

The Examiner suggests that Olafsson discloses a method for controlling the transmit power of the analog modem comprising using a measured transmit power level of at least one of the modems as a parameter in designing a constellation. The applicant respectfully traverses: Olafsson does not have a “measuring” step. Although Olafsson uses a “transmit power limit” (see column 5, line, 29) and a “transmit power formula”

(see column 5, line 38), neither of these are *measured*. Olafsson discloses performing a calculation and verifying that calculation. However, Olafsson neither discloses nor suggests “measuring a transmit power level of at least one of the analog modem and the digital modem; and using the measured transmit power level as a parameter in designing a constellation” as specified in claim 12 of the present invention. In view of the above remarks and amendments to claim 12 it is respectfully submitted that claim 12 is neither anticipated by nor obvious in view of Olafsson.

As claims 13 through 16 are dependent on independent claim 12 it is respectfully submitted that claims 13 through 16 are allowable for the same reasons as discussed above in reference to claim 12.

In view of the above remarks and amendments to the claims it is respectfully submitted that there is no 35 USC 112 compliant enabling disclosure in Olafsson showing the above discussed features. It is thus further respectfully submitted that claims 12-16 are not anticipated by Olafsson. It is thus, further respectfully submitted that this rejection is overcome and should be withdrawn.

Claims 1-11 and 17-22 are indicated as allowed. In view of the above remarks it is respectfully submitted that claims 12-16 are also allowable.

The applicant respectfully submits, in view of the above arguments, that all arguments made by the Examiner have been addressed and the rejections should be withdrawn. Therefore, the applicant respectfully submits that the present claimed invention is patentable.

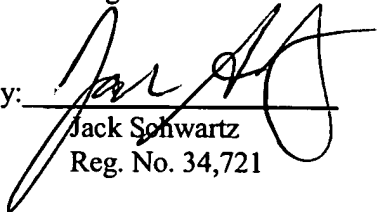
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CX020003

No additional fee is believed due. However, if an additional fee is due, please charge the additional fee to Deposit Account 50-2828.

Respectfully submitted,  
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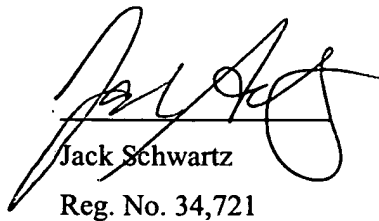
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